bearing on the question of 'default' and 'wilful default'. In that case the purchaser took an objection on title which was upheld by Neville J but was subsequently held by the Court of Appeal and the House of Lords to be not well founded. The vendor claimed to be entitled to interest on the remainder of the purchase money and the question before the court was whether the delay in completing the sale arose from any cause other than the neglect or default of the purchaser as provided in the contract. Parker J held that the purchaser in refusing to complete on the ground that the title was bad, though in fact was good, was guilty of default. In the course of his judgment, the learned judge said, at p 656:

> ... Default must, I think, involve either not doing what you ought or doing what you ought not, having regard to your relations with the other parties concerned in the transaction; in other words, it involves the breach of some duty you owe to another or others. It refers to personal conduct and is not the same thing as breach of contract.
>
> So, in contracts for the sale of real estate providing for completion at a certain date, and containing provisions as to what is to happen if completion be delayed beyond that date by or without the default, or wilful default, of either party, the conduct of that party has to be considered; and if he has been guilty of no breach of duty he will not, I think, be in default within the meaning of the contract. Of course the duties of each party towards the other must be determined by all the circumstances, including the nature of the contract and its provisions; and in determining these duties the complexities of the English law of real property must be borne in mind.

Later, the learned judge dealt with the question whether taking an objection or requisition which was unsustainable could amount to a default and said at p 657:

> ... If the court decides that an objection or requisition is untenable, it in effect decides that it ought not to have been insisted on, and consequently that the purchaser was in default in refusing to complete till it was complied with or removed. If, on the other hand, the court decides that the requisition or objection was good, it in effect decides that the vendor was in default in not complying with or removing it, if it was in his power so to do. The honest belief of either party in the validity of his own view will not prevent such party being in default, though it may prevent such default being a wilful default within the meaning of the contract in question.

In principle, what Parker J said is clearly applicable here. The plaintiff's solicitors laboured under an erroneous view of the law as to the effect of a bankruptcy notice and also imposed certain requirements to be complied with before completion and such requirements, in my judgment, are unsustainable. The plaintiff was therefore in default in taking such view of the law and in insisting on such requirements. She did what she ought not to have done, and what she did falls squarely within the meaning of the term 'default' as laid down by Parker J. In the case of *Toh Teck Sun* v *Mandarin Gardens Pte Ltd*[2] Chan J held that the plaintiff's counsel took a wrong view of the law as regards the furnishing of a completion account by the vendor and that the plaintiff in refusing to complete the transaction on that ground (based on the wrong view of the law) was guilty of a default. That precisely is also the position here.

In my judgment, the plaintiff must share the blame in not completing the sale and purchase of the property on 31 July 1987 or immediately thereafter. The delay in completing the transaction after 31 July 1987 was not attributable solely to the default of the defendants; it was attributable to the default of both the plaintiff and the defendants. The plaintiff therefore under cond 8(c) is not entitled to interest by way of liquidated damages for the period after 31 July 1987 and on the computation as provided by the defendants' solicitors, which I accept, no amount is payable to the plaintiff by way of liquidated damages. This appeal is allowed with costs and the order of the assistant registrar is set aside. I make no order on the assessment of damages and no order as to costs below.

Appeal allowed.

Solicitors: *Hin Rai & Tan*; *Ang Netto Rama & Wilson.*

Reported by *Terence Tan Bian Chye*

Ng Eng Wah v The Getz Corpn (Singapore) Sdn Bhd & Ors

HIGH COURT (SINGAPORE) – DISTRICT COURT APPEAL NO 63 OF 1987
THEAN J
24 MAY 1989

Civil Procedure – Trial judge's finding of fact – Findings inconsistent with some witnesses' evidence – Whether trial judge ought to make specific findings on witnesses' evidence

The appellant was driving a motor vehicle when it collided with another driven by the deceased. The appellant sustained serious injuries, and later started these proceedings against the respondents (probably the owners of the vehicle driven by the deceased) and the personal representatives of the deceased, claiming damages for negligence. The district judge found that at the time of the accident, the appellant was driving on the wrong side of the road and that his vehicle collided with that of the deceased's. The claim of the appellant was dismissed with costs. The appellant appealed against this judgment on the grounds that in his grounds of decision, the district judge failed to make specific findings as regards the physical evidence of the accident, and that he failed to say whether he accepted the evidence of the appellant or a witness, PW3.

Held, dismissing the appeal:

(1) It was quite apparent and obvious that the judge did not accept the evidence of the appellant and PW3, but accepted the evidence of defence witness DW1.

(2) The mere fact that a judge had a conclusion inconsistent with the evidence of certain witnesses but does not stigmatize them as false witnesses does not mean that he has forgotten or ignored them.

(3) The physical evidence against the appellant was overwhelming. The judge was therefore correct in dismissing the appellant's claim.

[*Editorial Note*: The defendants have appealed to the Court of Appeal vide Civil Appeal No 54 of 1989.]

Case referred to
1 *Watt* v *Thomas* [1947] AC 484 (folld)

HE Cashin for the appellant.
Lee Chee Sun for the respondents.

Cur Adv Vult

Thean J: On 9 February 1980, the appellant was driving a motor-van no GE4158T ('appellant's van') along Ponggol Road from Upper Serangoon Road towards the direction of Track 1 (Ponggol End). He had with him at that time a passenger, Low Aik Bee, who was his brother-in-law and was seated next to him. At or near a bend, a collision took place between his van and another motor-van no GF5870H coming from the opposite direction. It was a very severe collision. The driver ('the deceased') of the motor-van GF5870H was fatally injured, and the appellant sustained serious injuries from which, fortunately, he recovered. The force of the impact was tremendous. The passenger in the appellant's van was thrown out of the van and landed on the nearside of the road, and the motor-van GF5870H ('deceased's van') appeared to have been pushed backwards onto the grass verge and over a drain with its front badly damaged and facing the road. The appellant's van, after the collision, was on its ooffside and across the road with its front also badly damaged and facing the deceased's van.

The appellant subsequently instituted these proceedings in the District Court against the respondents and the personal representative of the deceased driver claiming damages for negligence on the part of the deceased driver. In due course, the case came on for hearing in the District Court. The investigating officer of the accident is Wong Ah Mooi (PW1) who went to the scene after the accident. She drew a sketch plan of the scene of the accident and took some measurements. She testified that there was a long line of deep scratch on the road leading to the offside front wheel of the appellant's vehicle. Next to and alongside the deep scratch was a type mark, and the mark was fresh. She could not say what the scratch was. The exact measurement of the scratch and tyre mark was not given but based on comparative measurements which the investigating officer provided, its length was probably about 20m. The appellant testified that just before the accident his vehicle was travelling on his side of the road at about 40 kmph, and the oncoming vehicle was on the wrong side of the road, ie on his side of the road. When he saw the deceased's van coming towards him, he immediately applied the brakes and at the same time swerved his vehicle to the left and then the collision took place. He could not say whether his vehicle moved forward after the impact. He maintained that the collision took place on his side of the road at the point which was the beginning of the deep scratch and tyre mark where he marked 'X'. His passenger, Low Aik Bee (PW3), also gave evidence. He corroborated the appellant's evidence that the appellant's van, before the accident, was on his side of the road and was travelling at about 40 to 45 kmph. While the appellant's van was travelling on his side of the road, an oncoming vehicle, that is the deceased's van, from the opposite direction collided into the appellant's van. He also maintained that the deceased's van was on the wrong side of the road and that at the time of the impact half of that vehicle was on the appellant's side of the road. When the impact occurred, he was thrown out of the appellant's van and landed on or near the grass verge.

The deceased's van at the material time also had a passenger. She is Giam Ching Keow (DW1). She was seated next to the deceased driver and carrying an infant. She said that she saw the appellant's van coming from the opposite direction; it was on the wrong side of the road, ie the deceased's side of the road. The deceased applied the brakes and came to a stop to give way to the appellant's van, which then came to the front and collided into the deceased's van. She maintained that the collision took place on the deceased's side of the road. The learned district judge on the evidence before him, including the photographs and the sketch plan, found that the appellant at the material time was travelling on the wrong side of the road and his van collided into the deceased's van. He dismissed the claim of the appellant with costs. Against that decision this appeal was brought, and at the conclusion of the hearing I dismissed the appeal with costs.

The main criticism directed against the grounds of decision of the learned district judge was that he failed to make specific findings: he made no observation or finding of the deep scratch and type mark on the road and did not consider the implication or significance thereof; he made no finding of the point of impact – whether it was at the point 'X' as alleged by the appellant or at the deceased's side of the road as alleged by DW1 or elsewhere; he did not say whether he accepted the evidence of the appellant or PW3; nor did he find whether the deceased was partly to blame. All these, counsel for the appellant argued, were not expressed in the grounds of decision of the learned district judge. I did not, however, agree with him. Firstly, the learned district judge did expressly say that he could not accept the evidence of the appellant that the impact occurred at the point marked

'X' and gave his reasons in support of this finding. Secondly, as contended by counsel for the respondents and I accepted his contention, it is quite apparent and obvious that the learned district judge did not accept the evidence of the appellant and PW3 and accepted the evidence of DW1. He recounted and reviewed the material portions of the evidence of the appellant, PW3 and DW1, and came to the conclusion that the appellant 'was travelling on the wrong side of the road and he collided into the motor-van GF5870H'. That finding was tantamount to a rejection of the appellant's and PW3's evidence and also to a finding that the appellant was wholly to blame. I was reminded by counsel for the respondent of what Lord Simonds said in the well-known case of *Watt* v *Thomas*[1] at p 492:

> ... Relying on the testimony of certain witnesses called on behalf of the respondent (whom I need not name) he [counsel for the respondent] said that the learned Lord Ordinary had come to a conclusion which was diametrically opposed to that testimony, yet he had not explicitly stated that he did not accept them as witnesses of truth nor indeed, made any adverse comment upon them. Your Lordships were therefore invited to find that the learned judge had forgotten or ignored this evidence and to hold that his judgment was thereby vitiated. I believe this to be fundamentally unsound criticism. The trial judge has come to certain conclusions of fact; your Lordships are entitled and bound, unless there is compelling reason to the contrary, to assume that he has taken the whole of the evidence into his consideration. If his conclusion is inconsistent with the evidence of certain of the witnesses but he does not, in terms stigmatize them as false witnesses, it is not the proper or necessary inference that he has forgotten or ignored them; of this the present case is a cogent example, for I can well understand why the Lord Ordinary, while not accepting his evidence, did not think fit to comment unkindly on one at least of the witnesses in question.

I found the above passage extremely apposite and respectfully adopted it (with suitable modifications) as a complete answer to the arguments advanced by counsel for the appellant.

I had also reviewed the evidence adduced and found myself in total agreement with the conclusion of the learned district judge. The evidence against the appellant was overwhelming. From the evidence and, in particular, the sketch plan and the photographs and the positions of the respective vehicles after the impact, the collision must have taken place on the side of the road on which the deceased's van was travelling and the impact must have occurred near the point where the broken glasses were found. The tyre mark and again the positions of the respective vehicles after the collision showed cogently that the appellant was at the material time travelling very fast; the force of the impact had pushed the deceased's van backwards and to the side onto the grass verge and, what is more, over the drain. Having regard to such incontrovertible documentary evidence, the evidence of the appellant and PW3 that just before the collision the appellant's van was travelling at about 40 kmph could not possibly be accepted. Nor could it be accepted that the collision occurred on their side of the road. Accordingly, in my judgment, the learned district judge was right in dismissing the claim.

Appeal dismissed.

Solicitors: *Murphy & Dunbar*; *Fam Tay & Lee*.

Reported by *Terence Tan Bian Chye*

Overseas-Chinese Banking Corporation Ltd v Norman Wright & Ors

HIGH COURT (SINGAPORE) – SUIT NO 3190 OF 1987
CHAO HICK TIN JC
15 MAY 1989

Civil Procedure – Interrogatories – Whether they should be allowed – Discovery – Further and better list of documents – Whether necessary for case – Whether interrogatories and list of documents merely for 'fishing' purposes

Tort – Libel – Defence of fair comment

An article written in a newspaper reported the plaintiffs' plans to recruit top bankers with the names of the persons sought being given. The first defendant wrote to the newspaper, commenting on the article. The first defendant wrote the letter in his capacity as managing partner of the second defendant, and he was also managing director of the third defendant. The letter, which was published by the newspaper, accused the plaintiffs of 'rank amateurism or carelessness' to have allowed the names of the persons it was seeking to recruit to be revealed to the press. The plaintiffs allege by reason of the publication of the letter they had been injured in their reputation and brought into public scandal, odium and contempt. They claim damages and an injunction.

In their defence, the defendants deny that the words were defamatory of the plaintiffs. In the alternative, they say that those words are a fair comment on a matter of public interest. In accordance with the Rules of the Supreme Court, the defendants have set out in their defence particulars of fact upon which the comment was based. Pursuant to an order of court, the first defendant furnished a list of particulars listing out the reasonable steps that would be taken by a reputable recruitment firm to ensure that the names of potential candidates were not prematurely publicly announced. Later, the first defendant and the third defendant were given leave to serve on the plaintiffs certain interrogatories. These asked (1) whether the plaintiffs were seeking to recruit top-ranking bankers; (2) whether the plaintiffs retained a reputable executive search firm to assist in the process of recruitment; (3) were the plaintiffs seeking to recruit four named persons; (4) whether the publication of the names of the persons sought to be recruited in the newspaper was without the consent of the plaintiffs' staff, the persons named in the newspaper, and the firms at which those persons were employed at the time of the publication; (5) whether the plaintiffs announced on a certain date the appointment of those persons sought to be recruited, (6) and (7) whether the plain-